



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 13 2016

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Thornhill and Mrs. Natalie Thornhill
More Power Tuning, LLC
490 North Street, #132
Longwood, FL 32750

Through:

Mr. Michael Cooke
Greenberg Traurig, P.A.
Attorneys at Law
625 East Twiggs Street
Suite 100, Courthouse Plaza
Tampa, FL 33602

Re: Notice of Violation

Dear Mr. & Mrs. Michael and Natalie Thornhill:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate More Power Tuning, LLC, (MPT) for compliance with section 203(a) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a), and its implementing regulations. As detailed in this Notice of Violation (NOV), the EPA has determined that MPT sold parts or components for motor vehicle engines that bypass, defeat, or render inoperative devices or elements of design of motor vehicles that were installed by the original equipment manufacturer to enable the motor vehicles to comply with CAA emission standards. The EPA also determined that MPT knew, or should have known, that these parts or components were offered for sale or installed for such use or put to such use. Therefore, MPT violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

Law Governing Alleged Violations

EPA administers a certification program to ensure that every vehicle introduced into United States (U.S.) commerce satisfies applicable emission standards. Under this program, EPA issues certificates of conformity (COCs), and thereby approves the introduction of motor vehicles into U.S. commerce. To obtain a COC, a motor vehicle manufacturer must submit a COC application to the EPA for each test group of vehicles that it intends to enter into U.S. commerce. 40 C.F.R. § 86.1844-01.

Motor vehicle manufacturers employ many devices and elements of design to meet emission standards to obtain COCs. *Element of design* means “any control system (*i.e.*, computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” 40 C.F.R. §§ 86.094-2 and 86.1803-01.

The CAA defines a “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” Section 216(2) of the CAA, 42 U.S.C. § 7550(1). In addition, the exclusion and exemption of motor vehicles and motor vehicle engines regulations clarifies that

“[f]or the purpose of determining the applicability of section 216(2) of the CAA, a vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, unless any one of more of the criteria set forth below are met, in which case the vehicle shall be deemed not a motor vehicle: (1) The vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces; or (2) The vehicle lacks features customarily associated with safe and practical street or highway use, ... ; or (3) The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely.” 40 C.F.R. § 85.1703.

The CAA makes it a violation “for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). It is also a violation to cause any of the foregoing acts. CAA § 203(a), 42 U.S.C. § 7522(a); 40 C.F.R. § 86-1854-12(a).

The CAA and the applicable regulations also prohibit any person from failing or refusing to make reports or provide information required under section 208 of the CAA, 42 U.S.C. § 7542. CAA § 203(a)(2), 42 U.S.C. § 7522(a)(2); 40 C.F.R. § 86.1854-12(a)(2)(i).

Finally, the CAA provides that persons subject to the requirements of the CAA, and the applicable regulations, shall establish and maintain records, and provide information, which the EPA may require to determine whether the person has acted, or is acting, in compliance with the CAA and its regulations. CAA § 208(a), 42 U.S.C. § 7542(a).

Factual Background

MPT advertises and offers for sale online certain parts or components for use on motor vehicles that are manufactured by the Ford Motor Company (Ford) and the General Motor Company (GM), which bypass, defeat, or render inoperative a device or element of design that is used to control emissions on the motor vehicle. The parts and components that are the subject matter of this Notice of Violation (NOV) are:

- (1) Tuners and calibration maps (a.k.a. tunes) that are used to reprogram the electronic control module (ECM) of gasoline fueled Ford and GM motor vehicles. The ECM is a computer and primary emission control component that acts as the brain of the engine control processes. The ECM collects input signals from multiple sensors, *e.g.*, revolutions per minute, engine temperature, air temperature, throttle position, manifold pressure, and crankshaft position. Based on the input signal and the fuel map(s) and spark timing map(s) programmed into the ECM, the ECM will send output signals to control the timing of the ignition spark, and the amount of fuel injected, which affects the fuel delivery and spark to each cylinder. By altering one or more of these parameters, the devices and software allow the engine to generate more power, but frequently at the loss of increasing criterion pollutant emissions; and
- (2) Exhaust systems that are used to eliminate the catalytic converter. The catalytic converter is a primary emission control component that is used to reduce toxic byproducts of burning fuel (*e.g.*, nitrogen oxides, carbon monoxide, and hydrocarbons) to less hazardous byproducts such as carbon dioxide, water vapor, and nitrogen gas.

On August 12, 2015, pursuant to section 208 of the CAA, the EPA issued to MPT an Information Request concerning, among other things, the hardware, software, and exhaust parts and components that MPT offered for sale or sold since January 1, 2014.

MPT responded to the Information Request on October 12, 2015. MPT's responses to the Information Request revealed the following:

1. As described in the enclosed Table 1, between January 1, 2014, and August 15, 2015, MPT offered for sale and sold 3,220 devices that were manufactured by Derive Systems and 1 device manufactured by Edge (the Subject Tuners).
2. MPT advertises and sells the Subject Tuners for use on 1996 to current model year Ford and GM motor vehicles.
3. Each Subject Tuner is a hardware device that attaches to the motor vehicle to reprogram the ECM's original stock calibrations/maps. According to MPT, each Subject Tuner comes preloaded with SCT maps for use on most Ford or GM 1996 to current model year vehicles. The Subject Tuner also has the ability to use custom maps created with SCT Advantage III software.
4. As described in the enclosed Table 2, between January 1, 2014, and August 15, 2015, MPT sold for use on Ford and GM motor vehicles 1,965 map calibrations (the Subject ECM Maps).
5. According to MPT, it creates the Subject ECM Maps using SCT software, encrypts the map's file, and sells and sends the file to its customer by email. Customers load the file onto their tuner using their computer and a software application, connect the tuner to their vehicles using the on board diagnostic systems (OBD) port, and, following the screen prompts, modify the ECM's original stock maps or certified design. All light duty motor vehicles must

be equipped with an OBD system capable of monitoring, for each vehicle's useful life, all emission-related powertrain systems or components. CAA § 202(m), 42 U.S.C. § 7521(m); 40 C.F.R. § 86.1806-01. The OBD system is required to detect, identify, and record malfunctions involving, among other things, the motor vehicle's catalytic converter, engine misfire, oxygen sensor, and vapor leaks.

6. The Subject Tuners and ECM Maps also have the ability to disable the check engine light caused by the removal or disabling of certain emission control parts, *e.g.*, the exhaust gas recirculation system, the catalytic converter system, oxygen sensor, and OBD system.
7. As described in the enclosed Table 3, between January 1, 2014, and August 15, 2015, MPT offered for sale or sold 84 exhaust systems (*i.e.*, "Y" pipes) that are used to bypass, defeat, or render inoperative the catalytic converter on certain Ford and GM motor vehicles (the Subject Exhaust Systems).

Alleged Defeat Device Violations

The Subject Tuners and ECM Maps function as defeat devices by rendering inoperative the motor vehicle's ECM certified design or original fuel and timing map calibrations that controlled emissions. Due to the design and purpose of the Subject Tuners and ECM Maps as shown by MPT's advertisements, MPT knew, or should have known, that the Subject Tuners and ECM Map calibrations were offered for sale, sold, or installed in order to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants. For example, for the SCT X4 Tuner, MPT advertises the following:

A Flash Programmer (AKA Flash Tuner) is a device that will immediately increase the horse power, torque and fuel economy for your vehicle. You chose the type of tune based on the type of performance you desire. Tunes can be switched at any time in a matter of minutes. Plus, it's 100% reversible. From the factory, your vehicle's computer is calibrated for the masses, designed with the average driver in mind, not the performance enthusiast. This not only leaves valuable Horsepower & Torque hidden inside your vehicle, but it also makes for a mediocre driving experience. The SCT Tuner System unlocks your vehicle's hidden performance potential by re-calibrating your vehicle's computer for Maximum Horsepower & Torque, Increased Throttle Response, Firmer Shifts and even Increased Fuel Mileage.

In addition, MPT advertises that the preloaded software has, among other things, the following effect on the motor vehicle's emission controls:

- "Disables the Rear O2s [oxygen sensor] and eliminates the CEL [check engine light] caused by removing the rear O2s. This is needed when running no cats (catalytic converter), aftermarket cats or an off-road x-pipe."
- "Removes the exhaust gas recirculation functions from normal engine operation."
- "Removes, Increases, or Decreases the vehicles speed limit (aka governor)."

- “Add or Remove Timing Advance to specific RPM ranges. (0 – 2000), (2000-4000), (4000-8000).”

Finally, the User’s Manual states the following for the SCT Subject Tuner Part Nos. 7015 and 7416:

- “Before taking your vehicle to the dealer service department for any type of service or warranty work, you should first return the vehicle back to the stock configuration.”
- “The stock file is stored during initial programming. The stock file stays on the programmer until returned to stock. You should always return your vehicle back to stock before taking your vehicle into any auto service facility... .”

Based on the foregoing, MPT committed 5,185 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B) by offering for sale and selling the 3,220 Subject Tuners and 1,965 Subject ECM Maps.

In addition, the Subject Exhaust Systems function as a defeat device by bypassing, defeating, or rendering inoperative the motor vehicle’s catalytic converter. MPT knew, or should have known, that the Subject Exhaust Systems were offered for sale, sold, or installed in order to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants. The EPA has maintained since the CAA amendments of 1990 that “any pipe used to replace the section of exhaust where the catalytic converter should be, would be considered illegal under the Clean Air Act.” EPA’s *Exhaust System Repair Guidelines*, March 13, 1991. In addition, MPT facilitated the removal of catalytic converters from motor vehicles by advertising and selling the Subject Tuners and ECM Maps that disable the check engine light after such removals. As a person who offered for sale or sold the 84 Subject Exhaust Systems, MPT committed 84 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

Enforcement Authority

The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Persons violating section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to an injunction under section 204 of the CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$3,750 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

The EPA contact in this matter is Jocelyn L. Adair. You may call Ms. Adair at (202) 564-1011 or contact her by email at adair.jocelyn@epa.gov to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we would hold any conference you request within a reasonable time thereafter.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip A. Brooks", written over a horizontal line.

Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement

Enclosures: Tables 1, 2, and 3

TABLE 1
Subject Tuners Sold

Part Number	Description of Tuner	Vehicle Application	Quantity Sold
5015	SCT Ford	1996 – present Ford	899
7015	SCT X4 Power Flash Ford	1996 – present Ford	1,427
4015	ITSX/TSX Android Wireless SCT Ford	1996 – present Ford	43
3015	SCT X3 Power Flash	1996 – present Ford	823
7416	SCT X4 Power Flash GM	1996 – present GM	6
3416	SCT X3 Power Flash GM	1996 – present GM	20
4416	ITSX/TSX Android Wireless SCT GM	1996 – present GM	1
85450	Edge Gas Evolution CTS2 Programmer	Various	1
		Total	3,220

TABLE 2
(Subject ECM Calibration Maps)

#	Part Number	Application	Number Sold
1	MPT Email SCT Custom Tune	Generic for various Ford vehicles	511
2	MPT Email SCT Custom Tune	2011 - 2014 GT.5.0L V8	132
3	MPT Email SCT Custom Tune	2005 - 2009 Ford Mustang GT	28
4	MPT Email SCT Custom Tune	1999 - 2004 Ford Mustang GT	21
5	MPT Email SCT Custom Tune	2005 - 2009 Ford Mustang V6 4.0L	12
6	MPT Email SCT Custom Tune	1999 - 2004 Ford Mustang V6 3.8L	10
7	MPT Email SCT Custom Tune	2011 - 2014 Ford Mustang V6 3.7L	450
8	MPT Email SCT Custom Tune	2009 - 2010 Ford F150 5.4L	39
9	MPT Email SCT Custom Tune	2004 - 2008 Ford F150 V8 5.4L	33
10	MPT Email SCT Custom Tune	2010 - 2014 Ford F150 6.2 L	29
11	MPT Email SCT Custom Tune	2011 - 2014 Ford F150 V8 5.0L	132
12	MPT Email SCT Custom Tune	2011 – 2014 Ford F150 3.7L	16
13	MPT Email SCT Custom Tune	2009 – 2010 Ford F150 4.6L	13
14	MPT Email SCT Custom Tune	2004 – 2008 Ford F150 4.6L	9
15	MPT Email SCT Custom Tune	1999 – 2004 Ford F150 5.4L	7
16	MPT Email SCT Custom Tune	1999 – 2004 Ford Lighting 5.4L	1
17	MPT Email SCT Custom Tune	2011 – 2014 Ford F150 Ecoboost 3.5L	283
18	MPT Email SCT Custom Tune	2015 F150 Ford Ecoboost 3.5L	2
19	MPT Email SCT Custom Tune	2011 – 2012 Ford Fusion 3.0L	8
20	MPT Email SCT Custom Tune	2006 – 2009 Ford Fusion 3.0L	1
21	MPT Email SCT Custom Tune	2010 – 2012 Ford Fusion 3.5L	2
22	MPT Email SCT Custom Tune	2006 – 2009 Ford Fusion 2.3L	3
23	MPT Email SCT Custom Tune	2010 – 2012 Ford Fusion 2.5L	1
24	MPT Email SCT Custom Tune	1999 – 2012 Ford Crown Victoria 4.6L	33
25	MPT Email SCT Custom Tune	Generic for various Ford vehicles	25
26	MPT Email SCT Custom Tune	2003 – 2007 Ford 6.0 Powerstroke Diesel	91
27	MPT Email SCT Custom Tune	1999 – 2003 Ford Powerstroke Diesel	31
28	MPT Email EFI Live Custom Tune	Generic GM vehicles Tune	12
29	MPT Email EFI Live Custom Tune	GM Supercharged – Generic various GM vehicles	1
30	MPT Email SCT Custom Tune	Generic Supercharged/Turbo Tune	20
31	MPT Email SCT Custom Tune	Generic natural Aspirated Tune	9
	Total		1,965

TABLE 3
Subject Exhaust Systems
(Y Pipes without Catalytic Converters)

#	Part Number	Application	Number Sold
1	AFE-4943058	2011 – 2014 Ford F150 5.0L	1
2	AFE-4943060	2011 – 2014 Ford F150 3.5L	1
3	BBK-1462	2011 – 2014 Ford Mustang 3.7L	2
4	BBK-18140	2011 – 2014 Ford Mustang 3.7L	6
5	MAK-11001	2011 – 2014 Ford F150 3.5L	33
6	MAK-11001SS	2011 – 2014 Ford F150 3.5L	7
7	MAK-11006	2011 – 2014 Ford F150 5.0L	10
8	MAK-15001	2015 Ford F150 3.5L	1
9	MBRP-CFGA1011	2011 – 2014 Ford F150 3.5L	14
10	MBRP-CFGS9011	2011 – 2014 Ford F150 3.5L	9
	Total		84